IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5927 OF 1991

Rasul Kasim Bagwan. .. Petitioner

V/s.

Murlidhar Vishnupant Karanjkar,)
since deceased through his legal)
heirs and representatives-)
Ashok Murlidhar Karanjkar & ors.). Respondents.

Mr. A.A.Kumbhakoni, Advocate for Petitioner.

Ms.Kranti Hiwrale for S.D.Thakade, advocate for Respondent Nos. 1 & 5.

CORAM: D.G.KARNIK,J.

DATE : 23RD AUGUST, 2004.

P.C. :

1. By this petitioner, the petitioner challenges the Judgment and Order dated 16th August, 1991 passed by the 5th Additional District Judge, Solapur dismissing the Civil Appeal No. 384 of 1988.

2. The facts relevant for the purpose of decision of this Appeal are as follows :

. The Petitioner is an owner and landlord of the house property bearing House No.3185,situated at Barshi. The Respondent is a tenant of shop premises situated therein admeasuring about 4 khans (for short "the suit premises"). The petitioner is also an owner of adjoining property. The petitioner filed suit against the Respondent for possession on the ground of reasonable and bonafide requirement and that the respondent was defaulters in the payment of rent of the acquired suit premises. The Trial Court dismissed the suit and by Order dated 16th August, 1991, the appellate Court dismissed the Appeal. That Judgment is impugned in this petition.

3. On receipt of the notice of demand the respondent paid all the arrears of rent. Therefore, no decree for eviction can be passed against the respondent on the ground of default. The suit premises is commercial premises. Hence acquisition of suitable alternative accommodation is not a ground for eviction.

4. As regards the ground of bonafide requirement, the learned counsel for the petitioner submits that the petitioner wants to construct a stair case leading to the first floor to be constructed on the adjoining property of the petitioner. He also needs the suit premises for

construction of lavatory and a bathroom. The Petitioner has not shown that except through the suit shops the staircase cannot be constructed in any other place. He has not produced the plans. In the circumstances, it is impossible to find out whether the Petitioner would require any part of the suit premises for the construction of stair case. The Petitioner has also not pleaded nor adduced any evidence to show for construction of the stair case possession of which part of the suit premises is required. In the circumstances, requirement for the purpose of construction of stair case cannot be said to be a reasonable and bonafide. Learned counsel submits that petitioner also requires the possession of the suit premises for the purpose of selling fruits. The Courts below have held that the Petitioner is in possession of shop premises on the southern side of the suit property. That shop is in possession of the petitioner for last 8 to 10 years and the shop is vacant and not used by the petitioner or his son. In the circumstances, view taken by the two courts below concurrently that the petitioner does not require suit premises reasonably and bonafide is an eminently possible view. No interference is called for in exercising the Writ Jurisdiction. Hence the petition dismissed with costs.

5. Rule discharged with costs.

(D.G.KARNIK,J)